

Division of Securities  
Utah Department of Commerce  
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BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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IN THE MATTER OF:

ROY A. CLARKSTON;  
MASADA CAPITAL LIMITED, LLC;  
**VIRGIL G. SMOCK; and**  
**E&V INVESTMENTS, INC.;**

Respondents.

NOTICE OF ENTRY OF  
DEFAULT AND ORDER

Docket No. SD-05-0062  
Docket No. SD-05-0063  
**Docket No. SD-05-0064**  
**Docket No. SD-05-0065**

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**I. BACKGROUND**

A formal adjudicative proceeding was initiated by the Division's Order to Show Cause and Notice of Agency Action dated October 3, 2005, against Virgil G. Smock (Smock), E&V Investments, Inc. (E&V), Roy A. Clarkston, and Masada Capital Limited, LLC. The Division's administrative actions against Roy Clarkston and Masada Capital Limited were settled in November 2005 by the entry of a Stipulation and Consent Order. The Division has moved for entry of a default judgment against Smock and E&V.

## **II. FINDINGS OF FACT**

1. On October 4, 2005, the Division mailed, by certified mail, an Order to Show Cause (OSC) to Smock and E&V, along with a Notice of Agency Action (Notice).
2. In late October 2005, the Division received notice from the United States Postal Service that delivery of the OSC and Notice to Virgil G. Smock and E&V Investments, Inc. was not successful.
3. On January 18, 2006, however, attorney Delano Findlay filed an Appearance of Counsel with the Division, providing notice that he represented Smock and E&V in this matter.
4. From approximately January to September 2006, the Division negotiated with Smock and E&V, through their attorney, and did not require the filing of an Answer to the OSC so long as negotiations continued.
5. On September 14, 2006, the Division received a proposed Stipulation and Consent Order from Mr. Findlay, which had been signed by Smock and E&V on August 25, 2006.
6. Pursuant to the Stipulation and Consent Order, Smock and E&V were to pay the Division reduced fines of \$500 and \$1,000, respectively.
7. On September 18, 2006, the Division received a letter from Smock, which included Smock's fine payment of \$500, and a letter which stated that E&V did not have the ability to pay the fine.
8. On September 29, 2006, the Division mailed a letter to Mr. Findlay, along with a re-drafted Stipulation and Consent Order for Smock alone, informing him that a default order may be entered against Smock if the Division did not receive the fully executed

Stipulation and Consent Order by Friday, October 6, 2006. The letter also stated that a default order may be entered against E&V if the Division did not receive E&V's written response to the OSC by Friday, October 6, 2006.

9. As of October 31, 2006, the Division has received neither a written response nor a signed Stipulation from Smock or E&V, despite the Division's demand that an Answer be filed after negotiations had failed.
10. E&V was registered in Utah as a foreign corporation (Delaware) on October 30, 1995, but its foreign corporate status expired on December 1, 1997. E&V's business address was 180 South 300 West, #209, Salt Lake City, Utah. Smock was E&V's president and sole director.
11. Smock resides in Salt Lake County, Utah.
12. Petra Tech, Inc. (Petra Tech), a Utah corporation, provides network security to federal agencies. Investor M. D. is the owner and operator of Petra Tech.
13. In 2003, Petra Tech needed funding and was unable to get a loan from traditional sources. M. D., therefore, contacted an acquaintance, Roy Clarkston (Clarkston), about getting a loan through his company Masada Mortgage and Business Finance Center, LLC (Masada Mortgage).
14. In June 2003, M. D. met with Clarkston, at M. D.'s home in Layton, Utah, to discuss the loan. During that meeting, Clarkston told M. D. about a loan guarantee program (the Loan Program) offered by Smock and E&V.

15. Clarkston told M. D. that under the Loan Program, a leading insurance company would guarantee Petra Tech future loan financing. Clarkston told M. D. that Petra Tech's loan would be locked in and guaranteed through the payment of an advanced fee of 4 to 5.5% of the total amount borrowed. Clarkston told M. D. that Clarkston and Masada Mortgage acted as a middle-man between Smock/E&V, and the prospective borrower.
16. Clarkston told M. D. that Smock controlled millions of dollars in various banking institutions. When M. D. asked Clarkston how he knew this, Clarkston replied that he had seen Smock's financial statements.
17. Clarkston told M. D. he knew and trusted Smock, and that he felt good about the Loan Program.
18. On June 24, 2003, M. D. received a letter from Clarkston, stating that Masada Mortgage had tentatively arranged for M. D. to deposit an advanced fee of \$5,000, on behalf of Petra Tech, into an escrow account at Premier Title Insurance Agency, and that the \$5,000 would immediately be released to E&V for administrative costs.
19. On July 8, 2003, Clarkston delivered loan documents for Petra Tech to M. D. at M. D.'s home. The documents included an Escrow Account Commitment for Insurance Guarantee Premium and Funding (Letter of Commitment) and a General Fee Agreement.
20. According to the Letter of Commitment, Petra Tech was to receive a loan in the amount of \$5 million within thirty banking days of Clarkston's and Masada Mortgage's receipt of the signed documents. In consideration for the loan, M. D. was to establish an escrow

account with Premier Title Insurance Agency, on behalf of Petra Tech, in the amount of \$17,750 for administrative costs, \$5,000 of which was to be released to E&V prior to Petra Tech's receipt of the loan funds.

21. According to the General Fee Agreement, Masada Mortgage would receive a commission of \$31,500 for arranging the loan for Petra Tech.
22. M. D. told Clarkston that Petra Tech could only afford to put up \$5,250 in advanced cash. Clarkston told M. D. that \$5,250 was enough to get the loan started.
23. On July 8, 2003, after reviewing the Letter of Commitment and General Fee Agreement, M. D. called Clarkston and told Clarkston he would like to have his attorney look at the documents before signing. Clarkston told M. D. that submitting the documents to an attorney would cause too much delay and that Smock was leaving on a trip the next day and needed the documents in the morning.
24. M. D. agreed to sign the Letter of Commitment and General Fee Agreement, and told Clarkston that he could get the documents and M. D.'s personal check for \$5,250 in the morning.
25. On July 9, 2003, Clarkston picked up the Letter of Commitment, General Fee Agreement, and \$5,250 check from M. D.'s home. The Letter of Commitment was signed by M. D. on behalf of Petra Tech on July 9, 2003, by Clarkston on behalf of Masada Mortgage on July 10, 2003, and by Smock on behalf of E&V on July 11, 2003. The General Fee Agreement was signed by M. D. on behalf of Petra Tech on July 9, 2003

and Clarkston on behalf of Masada Mortgage on July 10, 2003. M. D.'s personal check was made payable to Premier title Insurance Agency in the amount of \$5,250, and dated July 9, 2003.

26. When picking up the documents from M. D., Clarkston told M. D. the loan would be funded within four to six weeks.
27. On July 16, 2003, Premier Title Insurance Agency released \$5,000 of M. D.'s \$5,250 check to Smock.
28. Shortly thereafter, M. D. researched Smock on the Internet and discovered that Smock declared bankruptcy in 1996 and that E&V was no longer registered to do business in Utah.
29. On August 13, 2003, M. D. met with Clarkston at Clarkston's home in Ogden, Utah. M. D. confronted Clarkston with the information he had gathered about Smock, and Clarkston admitted he was aware of Smock's past. Clarkston again told M. D. that he trusted Smock, and that Smock controls over \$650 million dollars in various banks. Clarkston told M. D. to be patient and that he would get his money soon.
30. At the same meeting, Clarkston had M. D. sign several more documents on behalf of Petra Tech, including a Non-Circumvention & Non-Disclosure Agreement, Client Wire Instructions / Pay Order, and a Promissory Note in the amount of \$5 million. Clarkston told M. D. the documents needed to be completed before the loan would go through.

31. Several months passed without Petra Tech receiving the \$5 million dollar funding, and M. D. received excuse after excuse directly from Clarkston, and from Smock via Clarkston.
32. M. D. and Petra Tech received nothing from their investment in the Loan Program offered by Smock and E&V.
33. In November 2005, in conjunction with a Stipulation and Consent Order, Clarkston and Masada Mortgage paid M. D. his principal plus 12% interest, for a total of \$5,880.
34. In September 2006, Smock paid the Division a fine of \$500 in conjunction with settlement negotiations, but then failed to sign the final draft of the Stipulation and Consent Order.

Omissions of Material Information

35. In connection with the offer and sale of a security to M. D., Smock and E&V, directly or indirectly, misrepresented that for a sizable advanced fee, M. D. was guaranteed funding in the amount of \$5 million dollars. When, in fact, Smock and E&V had no reasonable basis on which to make this representation, and M. D. received nothing in return for his advanced fee.
36. In connection with the offer and sale of a security to M. D., Smock and E&V, directly or indirectly, failed to disclose material information, including, but not limited to, the following:
  - a. In 1996 Smock filed bankruptcy, and received a discharge in 2000;

- b. In 1997 and 1998 Smock had three non-dischargeable fraud judgments entered against his bankruptcy estate totaling \$666,331;
- c. The risk factors associated with the investment;
- d. In 1995, Clarkston pled guilty to money laundering and served 42 months in a Texas federal prison;
- e. Whether anyone related to the investment was licensed to sell securities; and
- f. Whether the investment was registered or exempt from registration.

### **III. CONCLUSIONS OF LAW**

- 37. The service of the OSC and the Notice initiating these proceedings is valid upon Smock and E&V.
- 38. Smock and E&V had actual notice of these proceedings.
- 39. Because Smock and E&V failed to file a written response to the October 3, 2005 OSC, they are in default.
- 40. The investment opportunity offered and sold by Smock and E&V is a security under the Utah Uniform Securities Act (the Act).
- 41. In connection with the offer and sale of a security, Respondents failed to disclose material information to M. D. which was necessary to make the statements made not misleading.
- 42. In connection with the offer and sale of a security, Respondents misrepresented material facts to M. D.
- 43. By this conduct, Smock and E&V violated § 61-1-1(2) of the Act.

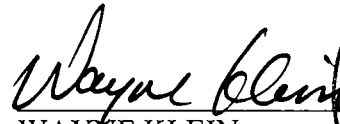


#### **IV. ORDER**

Based on the above, the Director hereby:

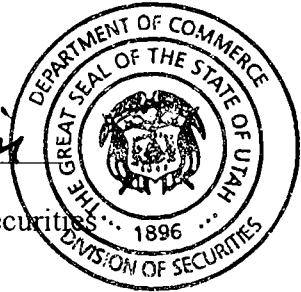
1. Declares Virgil G. Smock and E&V Investments, Inc. in default for failing to file a written response to the October 3, 2005 OSC.
2. Enters, as its own findings, the Finding of Fact described in Section II above.
3. Enters, as its own conclusions, the Conclusions of Law describe in Section III above.
4. Finds that Virgil G. Smock and E&V Investments, Inc. willfully violated the Utah Uniform Securities Act by misrepresenting material facts in connection with the offer and sale of a security in or from Utah in violation of § 61-1-1(2).
5. Finds that Virgil G. Smock and E&V Investments, Inc. willfully violated the Utah Uniform Securities Act by omitting to disclose material information in connection with the offer and sale of securities in or from Utah in violation of § 61-1-1(2).
6. Orders Virgil G. Smock and E&V Investments, Inc. to permanently CEASE and DESIST from any violations of the Act.
7. Orders E&V Investments, Inc. to pay a fine of five thousand dollars (\$5,000) to the Division by January 31, 2007.
8. Orders Virgil G. Smock to pay a reduced fine of five hundred dollars (\$500) to the Division by January 31, 2007. The \$500 paid by Smock in September 2006, is treated as payment in full of the fine.

DATED this 1<sup>st</sup> day of November, 2006.



WAYNE KLEIN

Director, Division of Securities



Pursuant to § 63-46b-11(3), Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

**Certificate of Mailing**

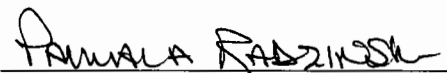
I certify that on the 3<sup>RD</sup> day of November 2006, I mailed, by certified mail, a true and correct copy of the Notice of Entry of Default and Order to:

Virgil G. Smock  
2156 West Aspen Ave.  
Bluffdale, UT 84065

Certified Mail # 7006 0100 0001 76889098

E&V Investments, Inc.  
180 S. 300 W., #209  
Salt Lake City, UT 84101

Certified Mail # 7006 0100 0001 76889104

  
Executive Secretary